IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

THURSDAY, THE 5TH JULY 2007 / 14TH ASHADHA 1929

Crl.MC.No. 686 of 2005()

CC.375/2004 of JUDL.MAGISTRATE OF FIRST CLASS COURT, ALATHUR

.....

PETITIONER: ACCUSED 2 & 9:

---

1. PETTA, W/O. RAMAKRISHNAN,
   KUMBALAPPADI HOUSE, PANTHALAMPADAM,
   KANNAMBRA, ALATHUR, PALAKKAD.

2. RAMAKRISHNAN, S/O. MAYANDI,
   VADAKKUMURI HOUSE, VANDAZHI, ALATHUR TALUK.

BY ADV. SRI.P.VIJAYA BHANU
SMT.P.MAYA

RESPONDENTS: STATE & COMPLAINANT:

---

1. STATE OF KERALA,
   REPRESENTED BY PUBLIC PROSECUTOR,
   HIGH COURT OF KERALA, ERNAKULAM.

2. DHANAREKHA, D/O. CHERIKAL APPUKKUTTAN,
   PAZHAMPALAKKADU, ALATHUR TALUK.

BY PUBLIC PROSECUTOR SRI.K.S. SIVAKUMAR
SRI.V.G.ARUN

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 05/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

....

Crl. M.C. 686 of 2005

.....

Dated, this the 5th day of July 2007

O R D E R

In this petition filed under Sec. 482 Cr.P.C. the petitioners who are accused Nos. 2 and 9 in C.C. No. 375 of 2004 on the file of the J.F.C.M., Alathur, for offences punishable under Sections 494, 109, 112, 114 and 120 B read with Section 34 I.P.C. seek to quash the complaint so far as it relates to them and the consequential proceedings.

2. I heard the learned counsel appearing for the revision petitioners and the learned counsel appearing for the 2nd respondent complainant.

3. The revision petitioners and 10 others were prosecuted by the 2nd respondent herein (Dhanarekha) for the aforementioned

offences by means of Annexure – A private complaint lodged before the J.F.C.M., Alathur. The gravamen of the complaint is as follows:-

The first accused is the husband of the complainant Dhanarekha. 2nd accused (Petta) is the mother of the first accused (incidentally 2nd accused who is the first revision petitioner died during the pendency of this revision petition). 3rd accused is the elder brother of the first accused, 4th accused is his wife and 5th accused is his daughter. 6th accused is another elder brother of the first accused and 7th accused is his wife. 8th accused is still elder brother of the first accused. 9th accused who is the 2nd revision petitioner herein is a neighbour of the first accused and who allegedly participated in the 2nd marriage and thereby allegedly abetted the same. 10th accused is the lady who was allegedly married by the first accused in the impugned marriage. 11th accused is the father of the 10th accused and 12th accused is her mother. The marriage between the first accused and the de facto complainant was on 10-12-1995. At the time of marriage, 35 sovereign of gold ornaments and 35,000/- rupees in cash were given. The first few

days of marriage were happy. Thereafter the de facto complainant was constantly harassed by accused Nos. 1 to 8. The first accused left the de facto complainant in her parental home some time in April 1997. Thereafter, he neglected her and did not make any enquiry about her. A female child was born to the de facto complainant in the first accused on 29-10-1997. Subsequently the first accused had initiated steps for dissolution of the marriage between him and the de facto complainant by filing M.O.P. 69 of 1999 before the Sub Court, Palakkad. The de facto complainant came to know that on 23-5-2001 her husband the first accused was seen travelling in a bus along with the 10th accused Subha as if they were man and wife. On enquiry made by the de faco complainant she came to know that accused Nos. 112 and 12 had having full knowledge about the earlier marriage of the first accused with the de facto complainant had given their daughter 10th accused in marriage to the first accused. The second marriage was conducted at the instigation, initiation and assurance of accused Nos. 2 to 9 and 11 and 12 with a view to conceal the same from the de facto

complainant and as part of the criminal conspiracy hatched by them. Hence the complaint.

4. The learned Magistrate took cognizance of the offence and registered the case as C.C. 375 of 2004 .

5. In as much as the 2nd accused the first revision petitioner died during the pendency of the case and the charge against her is abated. What now survives for consideration is as to whether there are sufficient averments in the complaint so as to rope in the 9th accused who is the 2nd petitioner herein who is allegedly an elderly man aged 78 years.

6. Except for an omnibus allegation in Annexure A5 complaint that the second marriage was conducted at the instigation, initiation and assurance of accused Nos. 2 to 9, 11 and 12, there is absolutely no specific allegation against the 9th accused with regard to the bigamous nature of the marriage. His complaint is silent as to the knowledge if any of the 9th accused regarding the factum of the first marriage of the first accused with the de facto complainant. To put it differently, the complaint does nto allege

that A9 had instigated or taken initiation or given any assurance for the 2nd marriage with the knowledge that the first accused had already married with the de facto complainant and the said marriage was subsisting which is a sine a qua non for a prosecution under Sec. 494 read with Sec. 109 I.P.C. Any amount of initiation, instigation, and assurance given for the 2nd marriage without the knowledge about the subsistence of the earlier marriage will be sufficient to rope in the 9th accused. Such being the position, to drive the 9th accused to an ordeal of a trial will amount to an abuse of the process of the court. 9th accused that the 2nd revision petitioner need not, therefore, face the trial. Hence Annexure A complaint, so far as it relates to the 9th accused and the consequential proceedings, so far as they relate to the 9th accused stand quashed.

This Crl.M.C. is allowed in part.

V. RAMKUMAR, JUDGE

ani.